

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY BERLIN IMMEDIATE

INFO USMISSION USBERLIN IMMEDIATE

AMEMBASSY BONN IMMEDIATE

AMEMBASSY LONDON

AMEMBASSY PARIS

C O N F I D E N T I A L STATE 040678

E.O. 11652: GDS

TAGS: CGEN, PFOR, GW, GE, US

SUBJECT:US-GDR CONSULAR NEGOTIATIONS

REF: STATE 038046

1.) ON FEBRUARY 20 TWO SIDES CONCLUDED JOINT REVIEW OF
RESPECTIVE DRAFT CONVENTIONS. BOTH SIDES RESERVED ON FOUR
ITEMS, A.) NATIONALITY DEFINITION, B.) RULES FOR PROTECTION
OF DUAL NATIONALS, C.) LANGUAGE TO FINESSE DIFFERING
INTERPRETATIONS OF STATUS OF EAST BERLIN, AND D.) MAXIMUM
PERIODS WITHIN WHICH NOTIFICATION AND CONSULAR VISITS
SHOULD BE MADE OR ALLOWED FOR ARRESTED NATIONALS. (SEE
REFTEL FOR DETAILS OF THESE ISSUES).

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2.) OTHER RESERVED POINTS COVER SEVERAL PROVISIONS DEALING WITH ESTATE AND PROBATE MATTERS, THIRD PARTY INSURANCE FOR CONSULAR VEHICLES, EXCEPTIONAL CIRCUMSTANCES UNDER WHICH RECEIVING STATES CAN TAKE ACTIONS AFFECTING VESSELS WITHOUT NOTIFYING CONSULS (US DRAFT ARTICLE 46, 4), NEED TO NOTIFY CONSULS IF SEAMEN ARE INTERROGATED ASHORE (US ARTICLE 46, 2), AND REQUISITIONS OF AND COMPENSATION FOR CONSULAR PROPERTY (US ARTICLE 25). THESE ARE MOSTLY TECHNICAL AND SHOULD POSE NO GREAT DIFFICULTIES.

3.) IT WAS AGREED THAT BOTH PARTIES WOULD REDRAFT THEIR TEXTS, AND EXCHANGE NEW DOCUMENTS, AFTER WHICH DATE FOR SECOND ROUND OF TALKS IN BERLIN WOULD BE ARRANGED.

4.) IN CONCLUDING REMARKS AMBASSADOR KLOBES EITE ATE IN GENERAL TERMS STRONG GDR INTEREST IN INCLUSION OF DEFINITION OF NATIONALITY IN CONSULAR CONVENTION. HE EXPRESSED VIEW THAT "ALL OTHER" PROBLEMS WOULD FALL INTO PLACE IF THIS DIFFICULTY WERE SOLVED. HE SAID THAT IF USG COULD NOT ACCEPT SUCH DEFINITION, THERE WOULD BE "LONG PAUSE" BEFORE SECOND ROUND COULD BE AGREED TO.

5.) US SIDE DID NOT RESPOND TO LATTER POINT, BEYOND RESTATING OUR VIEWS THAT NATIONALITY DEFINITION WAS UNNECESSARY FOR PRACTICAL EFFECTIVENESS OF CONSULAR TREATY, AND THAT ABSENCE OF SUCH DEFINITION DID NOT REFLECT UNFAVORABLE VIEWS ON FACT THAT GDR NATIONALITY WAS A REALITY. (ON FEBRUARY 16 US REP HAD PRIVATELY REPEATED TO KLOBES CATEGORICALLY THAT IT WAS UNREALISTIC FOR GDR TO EXPECT THAT USG WOULD DEPART FROM ITS LONG STANDING PRACTICE OF AVOIDING NATIONALITY DEFINITIONS.)

6.) PRESS GUIDANCE IS IN SEPTTEL.

7.) COMMENT: AS WITH UK, GDR IS TAKING HARD LINE ON NATIONALITY ISSUE. ALTHOUGH HE ONCE EXPRESSED SHARP RESENTMENT AT FRG CLAIMS TO REPRESENT GDR NATIONALS, KLOBES DID NOT DWELL TOO LONG ON MATTER. EVEN SO, WE WERE SURPRISED HE DID NOT CHALLENGE US WITH QUESTION AS TO HOW USG WOULD RESPOND TO FRG CONSULAR CONFIDENTIAL

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REQUEST TO REPRESENT A GDR CITIZEN. WE HAD TALKING PAPERS ADDRESSED TO SUCH QUESTIONS WHICH WE THUS DID NOT USE. IF ASKED, THE ESSENCE OF OUR ANSWER WOULD HAVE BEEN: BEGIN ANSWER: RE: ACCESS TO A GDR CITIZEN BY AN FRG CONSUL

1.) USA FULLY ACCEPTS CONCEPT OF GDR NATIONALITY. PARA 3 OF THE AGREED MINUTE ON ESTABLISHMENT OF DIPLOMATIC RELATIONS CAN BE INTERPRETED IN NO OTHER WAY. OUR

PROPOSED CONSULAR CONVENTION ADMITS OF NO OTHER VIEW. WE DO NOT CONSIDER THAT THIS REQUIRES ANY DEMONSTRATION.

2.) USG NEVER MAKES THE LAW OF ONE STATE EXCLUSIVELY DETERMINATIVE OF CONSULAR JURISDICTION IN THE US OVER AN INDIVIDUAL WHETHER THAT BE FRG OR ANY OTHER STATE'S LAW. WHITMAN 686 INDICATES OUR APPROACH.

3.) IF A GDR NATIONAL IS DETAINED, THE GDR CONSUL WILL BE NOTIFIED AND GRANTED ACCESS. IF, IN ANY CASE, A DETAINED GERMAN SHOULD ASK FOR AN FRG CONSUL, THE FRG CONSUL TOO WOULD BE NOTIFIED AND GRANTED ACCESS. SHOULD THE DETAINED PERSON INSIST ON HAVING ONLY ONE CONSULAR SERVICE PROTECT HIM, WE WOULD DECIDE BETWEEN THE OVERLAPPING CONSULAR CLAIMS IN FULL CONFORMITY WITH INTERNATIONAL LAW. END ANSWBJ

8.) FOR BERLIN, BONN, PARIS AND LONDON:

AT THIS STAGE WE WOULD PREFER THAT YOU LIMIT DISCUSSIONS WITH FRENCH, BRITISH AND GERMANS TO THE UNRESOLVED ISSUES OF A NATIONALITY DEFINITION AND PROTECTION OF US/GDR DUAL NATIONALS.

FYI: WE WILL SUGGEST SOME OTHER SPECIFIC MATTERS FOR DISCUSSION WITH FRENCH AND BRITISH IN SEPARATE MESSAGES. OUR EXPERIENCE ON SEVERAL ISSUES MAY STILL BE HELPFUL TO THE FRENCH. KISSINGER

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